IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1489 OF 2005
IN
SUIT NO. 3633 OF 1989

Murlidhar G. Sachdev & Anr. ... PLAINTIFF

V/s.

Lalchand G. Sachdev ... DEFENDANT

Mr. Shukla i/b. M/s. G.H. Shukla for the plaintiff. Defendant in person present.

CORAM : ANOOP V. MOHTA, J.
DATED : 24th March, 2006

P.C.

. Heard Mr. Lalchand G. Sachdev, the defendant in person. He has filed his affidavit to oppose the Notice of Motion whereby the plaintiff has prayed for restoration of the suit which was dismissed in default on 25th February 2005 and further prayed to continue order dated 16-09-1991 passed by this Court in Notice of Motion No. 1435 of 1991 and prayed for various other reliefs for protection of property in question.

2. In the affidavit in support of the Notice of Motion the plaintiff has made out a case in para (a) which is as under :-

a) Pending the hearing and final disposal of the suit, the Defendant is restrained by an order and injunction of this Court from parting with possession

of the premises described in prayer (a) of the plaint or creating any third party rights therein.

3. Plaintiff No. 2 is expired. Considering the controversy in the suit and in view of the averments made in the affidavit in support of Notice of Motion dated 12th May, 2005, I am of the view that sufficient case has been made out by the plaintiff to restore the suit. The delay as explained cannot be overruled.

4. Since 8th June, 2005, the following order is in operation.

B) In the mean while the defendant shall not alienate, transfer or part with possession of the suit property (Exhibit-B) in any manner whatsoever:

5. Keeping all points open between the parties, the Notice of Motion is allowed in terms of prayer clause (a), (b) & (c), however this is subject to cost of Rs. 3000/- to be paid within a week as condition precedent.

Prayer clause -

(a) that this Hon'ble Court be pleased to condone the delay in taking out the present Notice of Motion.

(b) that the order dated 25.2.2005, dismissing the suit for default be set aside and the suit be restored to be filed.

(c) that pending the hearing and final disposal of the suit, this Hon'ble Court be pleased to restore and

continue the order dated 16-09-1991 passed by His Lordship Mr. Justice D.R. Dhanuka in the Notice of Motion No. 1435 of 1991.

6. In view of this Notice of motion is disposed of.

[ANOOP V. MOHTA, J.]